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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

REBECCA FISHER and TRAVIS  
FISHER,

Plaintiffs,

Civ. No. 11-3093-CL

**TEMPORARY RESTRAINING ORDER**

v.

MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.,  
("MERS") a Delaware  
Corporation;

RECONTRUST COMPANY N.A.,  
("ReconTrust") a wholly  
owned subsidiary of  
Bank of America Corporation  
("BAC") a Delaware  
Corporation'

Defendants.

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**PANNER, J.**

*Pro se* plaintiffs seek an ex parte temporary restraining order to enjoin the foreclosure sale of their house. Although plaintiffs do not allege the date of the foreclosure sale in the complaint, plaintiffs do provide a notice of default and election to sell stating the house is scheduled for a foreclosure sale on

August 31, 2011. (Ex. 8, April 25, 2011 Notice of Default and Election to Sell, 2.) Plaintiffs allege defendants have not complied with the legal requirements for a valid non-judicial foreclosure. Among other allegations, plaintiffs allege defendants failed to record all assignments of the trust deed in the county land records prior to initiating the foreclosure proceedings. (Compl. ¶ 22.) In Oregon, a party initiating non-judicial foreclosure proceedings must record all assignments of the trust deed. ORS 86.735(1); Hooker v. Northwest Trustee Services, Inc., 2011 WL 2119103, \*3 (D. Or. May 25) (citing Burgett v. MERS, 2010 WL 4282105, at \*2 (D. Or. Oct. 20) and In re McCoy, 2011 WL 477820, at \*3-4 (Bankr. D. Or. Feb. 7)). Plaintiffs allege MERS is listed as the beneficiary on the deed of trust at issue. (Compl. ¶ 4.)

Because of the alleged imminent foreclosure sale, and because the presence of MERS demonstrates a high probability that defendants did not comply with the recording requirements of the Oregon Trust Deed Act, I grant plaintiffs' request for a temporary restraining order. Defendants, and their officers, agents, etc..., and other persons in active concert or participation with defendants, who receive actual notice of this order, are restrained from conducting a foreclosure sale for the following property: 220 Newt Gulch Road, Wilderville, Oregon, 97543 from this day until Wednesday, August 31, 2011, at 5:00

p.m. This court will hold a hearing on whether to issue a preliminary injunction at 10:00 a.m. on August 31, 2011, in the James A. Redden Courthouse in Medford.

IT IS SO ORDERED.

DATED this 14 day of August, 2011.

A handwritten signature in cursive script, reading "Owen M. Panner", written over a horizontal line.

OWEN M. PANNER  
U.S. DISTRICT JUDGE